GERWIN BLAKE RIDING

IBLA 83-219 Decided January 10, 1983

Appeal from decision of Utah State Office, Bureau of Land Management declaring unpatented mining claims abandoned and void. U MC 115903 through U MC 115954.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

   The recordation requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

   The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C § 1744 (1976) is imposed by the statute

itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with the authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Notice: Generally -- Regulations: Generally -- Statutes
All persons dealing with the Government are presumed to have knowledge of pertinent statutes and regulations duly promulgated thereunder.

APPEARANCES: Gerwin Blake Riding, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gerwin Blake Riding appeals the Utah State Office, Bureau of Land Management (BLM), decision of November 30, 1982, which declared the unpatented Cabin #1 and #2, Quartzite #1 and #2, Deal Camp #1 and #2, Dry Mountain #1 and #2, Dry Canyon, Dry Canyon #2 through #4, Phosphate #1 through #7, Jan #1 through #7, Odd Ball #6 through #11, Odd Ball #14, Sally #1 through #9, Calcite #1 through #3, Oak Knoll, Oak Knoll #1 through #4, Pine Canyon, and Roosevelt #7 mining claims, U MC 115903 through U MC 115954, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

The claims were located at various times between April 1935 and May 1976. Copies of the location notices were filed with BLM September 21, 1979, but no proofs of labor were filed that year. Proofs of labor were filed timely in 1980, 1981, and 1982.

Appellant states that he was not informed in 1979 when he filed the copies of the location notices that he also had to file evidence of assessment work. He asserts the claims have not been abandoned and that he and his associates hope to continue development work on the claims and to achieve a successful exploitation of the mineral values therein.

Section 314(a) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), reads:

> The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 or each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

> (1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim * * *, an affidavit of assessment work performed thereon, * * *.
>
> (2) File in the office of the Bureau [of Land Management] designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection * * *.

[1] Section 314 of FLPMA specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of every calendar year thereafter. Such filing must be made both in the office where the location notice is recorded, i.e., the county recording office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment in the county recording office of a proper recording of evidence of assessment work or a notice of intention to hold the mining claim does not relieve the claimant from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Thomas Mason, 64 IBLA 104 (1982); Enterprise Mines, Inc., 58 IBLA 372 (1981); Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Enterprise Mines, Inc., supra; Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1981); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra.

[2] As the Board said in Lynn Keith:

> The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

[3] It is unfortunate that appellant was not aware of what is required under section 314 of FLPMA, but it is an established rule of law that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. §§ 1507, 1510 (1976). See John Murphy, 58 IBLA 75 (1981); John Plutt, Jr., 53 IBLA 313 (1981); Edward W. Kramer, 51 IBLA 294 (1980). A careful reading of the statute and the regulation, 43 CFR 3833.2-1, would have clearly indicated that evidence of assessment work or a notice of intention to hold the claims must have been filed both in the county recording office and with the proper office of BLM on or before October 22, 1979. Furthermore, appellant cannot pass the onus for his failure to file evidence of assessment work onto the BLM employees. See 43 CFR 1810.3.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques
Administrative Judge

We concur:

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Anne Poindexter Lewis
Administrative Judge

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Will A. Irwin
Administrative Judge